



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Linton S. Savage
County Attorney
Corpus Christi, Texas

Dear Sir:

Opinion No. O-1348

Re: Whether indenture of mortgage executed by Republic Natural Gas Company, covering properties located in as well as out of the State of Texas must be stamped in accordance with Article 7047a, R.C.S., as amended by S. B. No. 84, Forty-sixth Legislature.

We received your letter of August 26, 1939, wherein you set forth the following facts:

"Republic Natural Gas Company, a corporation of the State of Delaware, duly licensed as a foreign corporation in this State, is about to execute and present for recording in Nueces County and San Patricio Counties, Texas, its indenture of mortgage to City Bank Farmers Trust Company, a corporation of New York, and Ralph E. Morton, as Trustees, to be dated as of September 1, 1939.

"Under this indenture the maximum principal amount of bonds which may be issued and delivered thereunder is limited to \$5,600,000. The bonds initially to be issued are in two series, both dated as of September 1, 1939, and will be 'bearer bonds.' Bonds under the first series are entitled 'First Mortgage Bonds, Series A,' and will be issued in the aggregate principal amount of \$2,800,000, all of which will mature on September 1, 1951. Bonds of the second series are entitled 'First Mortgage Bonds, Series B,' and will be issued in the aggregate principal amount of \$2,800,000. These bonds will mature serially, beginning March 1, 1940, to and including September 1, 1946.

"The indenture securing these obligations will convey certain oil and gas leases and some fee property in the States of Kansas and Oklahoma and, as well, some oil and gas leases in the Counties of Nueces and San Patricio, Texas.

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"There is also pledged a contract covering purchase of gas from certain lease in San Patricio County, Texas, and contracts covering sale of gas produced from all three states.

"All of the bonds of Series A will be purchased from the mortgagor by Metropolitan Life Insurance Company, a corporation of New York. All of the bonds of Series B will be purchased from the mortgagor by The National City Bank of New York."

You mention an opinion by an Assistant Attorney General under the preceding administration, dated February 15, 1937, addressed to the County Attorney of Potter County, to the effect that a trust indenture on properties within as well as without the State of Texas in favor of and delivered to non-residents of the State are exempt from the tax, and you further mention an opinion by the prior administration of this office, addressed to the County Attorney of Wichita County, dated May 27, 1938, seeming to hold that obligations owned by national banks are exempt from such tax. You request our opinion as to whether or not the indenture of mortgage to be executed by Republic Natural Gas Company, before being recorded, must be stamped in accordance with the provisions of Article 7047e, R.C.S., as amended by S.B. No. 24 by the 46th Legislature.

Said S.B. No. 24, 46th Legislature, reads in part as follows:

"Except as herein otherwise provided there is hereby levied and assessed a tax of Ten (10¢) Cents on each One Hundred (\$100.00) Dollars or fraction thereof, over the first Two Hundred (\$200.00) Dollars, on all notes and obligations secured by chattel mortgage, deed of trust, mechanic's lien contract, vendor's lien, conditional sales contract and all instruments of a similar nature which are filed or recorded in the office of the County Clerk under the Registration Laws of this State; provided that no tax shall be levied on instruments securing an amount of Two Hundred (\$200.00) Dollars, or less. After the effective date of this Act, except as hereinafter provided, no such instrument shall be filed or recorded by any County Clerk in this State until there has been affixed to such instrument stamps in accordance with the provisions of this section; providing further that should the instrument filed in the office of the County Clerk be security of an obligation that has property pledged as security in a State or States other than Texas, the tax shall be based upon the reasonable cash value of all property pledged in Texas in the proportion

that said property in Texas bears to the total value of the property securing the obligation; ... and provided further that when once stamped as provided herein, an instrument may be recorded in any number of counties in this State without again being so stamped. ...

"If the amount secured by an instrument is not expressed therein, or if any part of the security described in any such instrument appears to be located without the State of Texas, the County Clerk shall require proof by written affidavits of such facts as may be necessary to determine the amount of the tax due."

The provision with reference to prorating the tax, where a part only of the security is located in the State of Texas, was not in the original Article 7047e, R.C.S., as the same existed at the time of the opinion to the County Attorney of Potter County. Furthermore, we might observe that on April 29, 1938, the preceding administration of the Attorney General's Department in an opinion written by H. L. Williford, Assistant Attorney General, addressed to Hon. Charley Lockhart, State Treasurer, ruled contrary to the opinion of February 15, 1937.

In our conference opinion No. 3061, dated June 17, 1939, addressed to Hon. Charley Lockhart, State Treasurer, we expressed the view that the tax levied by S.B. No. 24 is a tax upon the privilege of recording. Particularly in view of the inclusion in the amended Act of the provisions requiring the proration of the tax where a part of the security is located outside the State of Texas, we believe that the instrument in question must bear stamps as provided in the amended Act, and determined as therein provided.

In opinion No. 0-267, dated February 25, 1939, addressed to the State Treasurer, as well as in our opinion No. 0-874, recently given to the Banking Commissioner of Texas, we expressed the view that lien instruments taken by national banks and owned by them are not subject to the tax. However, it will be noted that in the facts submitted to us by you none of the bonds secured by this indenture of mortgage is now owned by the National City Bank of New York, but apparently that bank simply plans to purchase Series B of the bonds so secured. If we understand the instant situation correctly, the National City Bank of New York would not be paying this tax. Hence no exemption would be afforded the indenture of mortgage in question.

The tax should be calculated as set forth in S.B. No. 24 and collected accordingly.

Yours very truly

ATTORNEY GENERAL OF TEXAS

GRL-MR
APPROVED SEP 7, 1939
Gerald C. Mann (signed)
ATTORNEY GENERAL OF TEXAS

By (signed)
Glenn R. Lewis
Assistant

(STAMPED) Approved
Opinion Committee
Chairman